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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**

9 **AT SEATTLE**

10 **JARED SERMON AND JAMIE)** **Case No. 2:09-cv-01597-JLR**
11 **SERMON,**)
12) **FIRST AMENDED COMPLAINT**
13 Plaintiffs,)
14)
15 vs.) **JURY TRIAL DEMANDED**
16) **IQ DATA INTERNATIONAL, INC.,**)
17 Defendant.)

18
19 **NATURE OF ACTION**

20 1. This is an action brought under the Fair Debt Collection Practices
21 Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, the Revised Code of Washington,
22 Chapters 19.16, the Washington Fair Debt Collection Practices Act, and 19.86,
23 the Washington Consumer Protection Act.
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JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiffs' action occurred in this State and this district, where Plaintiffs reside in this State and this district, and where Defendant transacts business in this State and this district.

PARTIES

4. Plaintiffs, Jared Sermon and Jamie Sermon ("Plaintiffs"), are natural persons who at all relevant times resided in the State of Idaho, County of Canyon, and City of Nampa.

5. Plaintiffs are "consumers" as defined by 15 U.S.C. § 1692a(3).

6. Defendant, I.Q. Data International, Inc., ("Defendant") is a corporation who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiffs, as defined by 15 U.S.C. §1692a(5).

7. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

8. Plaintiffs are natural persons obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

9. Plaintiffs' obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes.

10. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

11. On or about July 11, 2009, Defendant wrote Plaintiffs a letter in an effort to collect from Plaintiffs an obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant.

12. Shortly thereafter, Defendant began making and/or placing multiple telephone calls to Plaintiffs' cellular telephone number, in effort to collect from Plaintiffs an obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant.

1 13. In addition to calling Plaintiffs' cellular telephone number,
2 Defendant made and/or placed multiple telephone calls to Plaintiff Jamie
3 Sermon's work telephone number regarding the alleged debt.
4

5 14. Plaintiff Jamie Sermon informed Defendant that such calls were
6 inconvenient and violated her employer's policy, and asked Defendant to cease
7 all phone calls to her work telephone number.
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9 15. Defendant continued to call Plaintiff Jamie Sermon's work telephone
10 number after being asked to cease said phone calls.
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12 16. During these telephone conversations with Plaintiffs, within the
13 thirty day dispute period, Defendant threatened to process a judgment
14 immediately against both Plaintiffs if they did not enter into an acceptable
15 payment plan or pay in full.
16

17 **COUNT I: VIOLATION OF 15 U.S.C. § 1692e(5)**
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19 17. Plaintiffs incorporate by reference all of the preceding paragraphs.
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21 18. Defendant violated 15 U.S.C. § 1692e(5) by threatening to take
22 action which cannot legally be taken or that was not actually intended to be taken
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24 19. Defendant threatened to process a judgment immediately against
25 Plaintiffs when Defendant had no intention of doing so and only mentioned the
26 judgment so as to induce Plaintiffs into paying the debt.
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1 20. To the extent that Defendant intended to process a judgment
2 immediately against Plaintiffs, Defendant threatened to take action which cannot
3 legally be taken.
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5 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- 6 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(5);
7
8 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C.
9 §1692k, in the amount of \$1,000.00;
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11 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
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13 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
14 this action;
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16 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as
17 may be allowed under the law;
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19 f) Awarding such other and further relief as the Court may deem just
20 and proper.

21 **COUNT II: VIOLATION OF 15 U.S.C. § 1692g(b)**

22 21. Plaintiffs incorporate by reference all of the preceding paragraphs.

23 22. Defendant violated § 1692g(b) by overshadowing the disclosures
24 required by § 1692g(a) during the thirty day dispute period.
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1 23. 15 U.S.C. § 1692g(a) requires debt collectors to disclose certain
2 information to debtors within five days after the initial communication with a
3 debtor. *See* 15 U.S.C. § 1692g(a)(1)–(5).
4

5 24. 15 U.S.C. § 1692g(b) prohibits “[a]ny collection activities and
6 communication during the 30-day period [that] overshadow or [are] inconsistent
7 with the disclosure of the consumer’s right to dispute the debt”
8

9 25. A debt collector does not comply with section 1692g(a) “merely by
10 inclusion of the required debt validation notice; the notice Congress required must
11 be conveyed *effectively* to the debtor.” *Swanson v. Southern Oregon Credit Serv.,*
12 *Inc.*, 869 F. 2d 1222, 1225 (9th Cir.1988) (emphasis added). A collection letter,
13 even should it track the statutory language of the FDCPA, “nonetheless violates
14 the Act if it conveys that information in a confusing or contradictory fashion so as
15 to cloud the required message with uncertainty.” *Meselsohn v. Lerman*, 485 F.
16 Supp. 2d 215 (E.D. N.Y. 2007). Language is “overshadowing or contradictory if
17 it would make the least sophisticated consumer uncertain as to her rights.”
18 *Russell v. Equifax A.R.S.*, 74 F. 3d at 30 (2d Cir. 1996).
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23 26. Defendant overshadowed the disclosure required by § 1692g, in
24 violation of § 1692g(b), by threatening to take legal action against Plaintiffs
25 during the thirty day dispute period.
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WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692g(b);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT III: VIOLATION OF 15 U.S.C. § 1692c(a)(3)

27. Plaintiffs incorporate by reference all of the preceding paragraphs.

28. 15 U.S.C. § 1692c(a)(3) prohibits debt collectors from communicating with a debtor at his or her "place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication."

29. Defendant violated § 1692c(a)(3) by continuing to call Plaintiff Jamie Sermon's work telephone number after being informed by Plaintiff that the calls were inconvenient and against the policy of Plaintiff's employer.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692c(a)(3);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT IV: VIOLATIONS OF THE WASHINGTON FAIR DEBT COLLECTION PRACTICES ACT, RCW § 19.16.250(12)

30. Plaintiffs incorporate by reference all of the preceding paragraphs.

31. Defendant violated RCW § 19.16.250(12)(a) by calling Plaintiffs more than three times in a single week.

32. Defendant violated RCW § 19.16.250(12)(b) by calling Plaintiff Jamie Sermon's work number more than one time in a single week.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated RCW § 19.16.250(12)(a)–(b);
- b) Awarding Plaintiffs statutory damages;
- c) Awarding Plaintiffs actual damages;
- d) Awarding Plaintiffs discretionary and treble damages;
- e) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- f) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- g) Awarding such other and further relief as the Court may deem just and proper.

COUNT V: VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW § 19.86

33. Plaintiffs incorporate by reference all of the preceding paragraphs.

34. RCW § 19.16.440 provides that a violation under RCW § 19.16 (The Washington Fair Debt Collection Practices Act) is a per se violation of RCW 19.86 (The Washington Consumer Protection Act).

1 35. Thus, having violated RCW § 19.16, Defendant is also in violation
2 of RCW § 19.86.

3 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:
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- 5 a) Adjudging that Defendant violated RCW § 19.86;
- 6 b) Awarding Plaintiffs statutory damages;
- 7 c) Awarding Plaintiffs actual damages;
- 8 d) Awarding Plaintiffs discretionary and treble damages;
- 9 e) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
10 this action;
- 11 f) Awarding Plaintiffs any pre-judgment and post-judgment interest as
12 may be allowed under the law;
- 13 g) Awarding such other and further relief as the Court may deem just
14 and proper.
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Respectfully submitted this 13th day of July, 2010.

s/Jon N. Robbins

Jon N. Robbins

28991

WEISBERG & MEYERS, LLC

3877 N. Deer Lake Rd.

Loon Lake ,WA 99148

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DECLARATION OF SERVICE/MAILING

I, Jon N. Robbins, do hereby state under penalty of perjury under the laws of the State of Washington that on this date, I caused to be delivered a true and correct copy of this First Amended Complaint to the attorney for defendant, Michael S. O'Meara, through the Court's Electronic Filing system, to:

Michael S. O'Meara

I.Q. Data International, Inc.

1010 S.E. Everett Mall Way, Suite No. 100

Everett, WA 98208

WSBA No. 41502

SIGNED this 13th day of July, 2010, at Seattle, Washington.

/s/ Jon N. Robbins

Jon N. Robbins